

September 2, 1977

Mr. Richard Sanders
Chief, pipeline safety
Mississippi Public Service Commission
P.O. Box 1174
Jackson, Mississippi 39295

Dear Mr. Sanders:

This refers to your letter of August 23, 1977, transmitting a request by the Mississippi Valley Gas Company that the January 1, 1978, deadline for compliance with 49 CFR 192.707 (a)(1) and (2) be extended until April 30, 1979, with respect to certain Class 3 and Class 4 mains and transmission lines operated by the Company.

In accordance with Sec. 3(e) of the natural Gas Pipeline safety Act of 1968 (49 USC 1672(e)), as in Sec. 3(a) certified state agency, the Commission is empowered to grant the waiver request, provided we are given notice of the Commission's action at least 60 days before the effective date of the waiver. Sec. 3(e) further provides that if we object to a waiver before it is effective, the waiver is stayed pending the outcome of any additional proceedings which a state agency may request. Because of this special Federal and State relationship requesting waivers from the Federal gas pipeline safety standards, it is appropriate that the Commission, rather than this Office, make initial ruling on the waiver request. The 60 day period will begin to run when we receive notice that a waiver has been granted.

We understand that the Company is requesting the waiver so that it may be additional time to take advantage of the exception under section 192.707(b)(2)(ii) which provides that markers are not required in Class 3 and Class 4 locations where a program for preventing interference with underground pipelines is established by law. The company expects that such a law will be passed in the 1979 legislature, and state that an extension until April 10, 1979, would provide time for the necessary legislative action or, if necessary, the procurement and installation of 40,000 markers. The request is consistent with the purpose of Section 192.707(b)(2)(11) which is to provide operators an incentive to seek enactment of pipeline damage prevention laws. Thus, where a bona fide effort has been made to promote adequate legislation in the past and the political climate appears favorable for future enactment, we believe that an operator should be allowed some reasonable additional time to utilize the exception rather than be required to install line markers before January 1, 1978.

At the same time, an operator should not be led to believe that waivers will be granted repeatedly in hope that the needed legislative action will be forthcoming. The Company recognizes this situation in its waiver request by suggesting that the time between April 30, 1978, and April 30, 1979, will be used to install markers if a proper bill is not passed in the 1978 session. In this regard we believe that any order by the Commission granting the requested waiver should include a condition that the Company follow a line marking installation program to be completed by April 30, 1979, which is approved and monitored by the Commission.

We would also like to mention what we believe are two shortcomings in House Bill No. 1076 which is intended for introduction in the 1978 legislature. First, the most important factor in a damage prevention program is establishment of an effective means for notifying an excavator of the precise location of underground utilities, which are in the area of the planned excavation. House Bill No. 1076 does not provide a mechanism for ensuring that excavators obtain this information. Instead, under Sec. 3, the bill would merely require that an excavator has "reasonable efforts" to learn whether underground utilities exist in an area and who the owners of the utilities are.

This requirement would amount to nothing more than what a prudent excavator would do in the absence of a governing statute. A more desirable approach which we advocate is found in the enclosed Modal, Underground Utility Damage Prevention Act. Under Sec. 3 of the Modal Act, utility operators must publicly identify the areas in which they have underground utilities. Sec. 6 requires an excavator to notify the operators who have filed information under Sec. 3. In this way excavators can follow a structured process to obtain the necessary information about the location of underground utilities without having to rely on their personal capabilities at each new area of excavation.

Secondly, we are concerned that House Bill No. 1976 does not contain any penalty provision applicable to violations of the law. We feel that to make a government program effective, the enabling legislation should include a civil penalty provision such as the one set forth in sec. 12 of the Model Act.

We appreciate this opportunity to comment in advance on the waiver proposed by the Mississippi valley Gas Company . if we can be of any further assistance to the Commission regarding either the waiver application or enactment of a proper state damage prevention law, please let me know.

Sincerely,
SIGNED
Cesar DeLeon
Acting Director
Safety Operations

MISSISSIPPI PUBLIC SERVICE COMMISSION
WALTER SILLERS STATE OFFICE BLDG.
P. O. BOX 1174
JACKSON, MISSISSIPPI 39205

August 23, 1977

Mr. Cesar DeLeon, Acting Director
Office of Pipeline Safety Operations
Material Transportation Bureau
Washington, DC 20590

Dear Mr. DeLeon:

Please find attached a request for waiver from Section 192.707. This request is being submitted by Mississippi Valley Gas Company in the hope that OPS and the State of Mississippi will see fit to allow additional time from the marking requirements of Part 192.707. Based on pending legislature, I see no reason to deny this request.

Please find attached a copy of Bill No. 1076 which will be reintroduced in the State Legislature in 1978. I am sure as you read House Bill No. 1076, you will find that this is not the best underground damage law used by the State, but it will be stepping stone to allow the gas operators and the Mississippi Public Service Commission a foothole in the door to accomplish the intent spelled out in Part 192.707.

Your immediate attention to this matter would be deeply appreciated.

Respectfully yours,
Richard Sanders
Chief, Pipeline Safety

MISSISSIPPI VALLEY GAS COMPANY

P. O. Box 3348

Jackson, Mississippi 39207

August 12, 1977

Mississippi Public Service Commission

Post Office Box 1174

Jackson, Mississippi 39205

Subject: Waiver of Certain Provisions of Part 192.70
Title 49 of the Code of Federal Regulations –
Line Markers for Mains and Transmission Lines

Gentlemen:

The subject part requires that pipelines be marked as stated in Paragraph (a) (1) and (2) with certain exceptions and with a delayed effective date for pipelines installed before April 21, 1975. The effective date for these pipelines is January 1, 1978.

We are complying with the provisions of Part 192.707 in all installations made after April 21, 1975 and will be in compliance by January 1978 on all mains installed prior to April 21, 1975 in Class 1 and 2 locations.

We determined in 1975 that the most desirable solution for Class 3 and 4 locations was option (2)(ii) which is the enactment of a law preventing interference with underground pipelines. In our opinion, the option is more effective in preventing damage and is much less burdensome financially. It is estimated that the cost of marking all of our facilities in Class 3 and 4 locations installed prior to April 21, 1975 would be approximately \$400,000 and require 40,000 markers.

A bill was introduced in the 1976 session of the State Legislature, but died in Committee. It was introduced in the 1977 session (House Bill Number 1076) and passed the House of Representatives, but was tabled in the Senate by its supporters because of an amendment which would have rendered the bill ineffective. We are confident that a satisfactory bill can be passed in the 1978 Legislature because of the experience in 1977 and because it has the support of the following organizations and companies:

1. Mississippi Valley Gas Company
2. Entex
3. Willmut Gas and Oil
4. South Central Bell Telephone Company
5. Associated General Contractors
6. Mechanical Contractors Association
7. Mississippi Municipal Association
8. City of Jackson, Mississippi
9. Mississippi Public Service Commission

Willmut Gas and Oil, Entex and Mississippi Valley Gas serve approximately 85% of the gas customers in the state.

We, therefore, request an extension of the effective date of Paragraph (a) (1) and (a) (2) of Part 192.707 as it applies to mains installed before April 21, 1975 and an extension of the effective date of Paragraph (a) (1) of Part 192.707 as it applies to transmission lines installed before April 21, 1975 where such mains and transmission lines are in Class 3 and 4 locations. This extension should be of sufficient length to allow the Legislature to act on the bill to be presented in January, 1978 and, if the Legislature fails to act, it should be of sufficient length to allow the installation of markers and/or other action which will bring mains and transmission lines installed prior to April 21, 1975 into compliance with 192.707. An extension until April 30, 1978 will satisfy the requirements for legislative action and an

additional extension until April 30, 1979 will allow time for the procurement and installation of the necessary 40,000 markers and/or action if this is necessary.

We request your approval of this waiver.

Yours very truly,
Joe J. Powell, Jr.

House Bill No. 1076
(As Passed by House)

1. AN ACT TO PROTECT PERSONS AND PROPERTY FROM ACCIDENTS
2. RESULTING FROM EXCAVATION DAMAGE TO UNDERGROUND UTILITY LINES AND
3. UNDERGROUND FACILITIES; TO ESTABLISH NOTICE REQUIREMENTS FOR
4. EXCAVATION; TO PROVIDE REMEDIES FOR VIOLATIONS OF THIS ACT; AND
5. FOR RELATED PURPOSES.
6.
7.

8. BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

9. SECTION 1. The purpose of this act is to protect underground
10. utility facilities from destruction or damage, in order to prevent
11. death of or injury to persons, property damage to public and
12. private property, and loss or interruption of essential utility
13. services to the general public.

14. SECTION 2. For purposes of this act the following.
15. definitions shall apply:

16. (a) "Excavate" or "excavation" shall mean any operation in
17. which earth, rock or other material in or on the ground is moved,
18. removed or otherwise displace by means of any tools, equipment or
19. explosives, and includes, without limitation, grading, trenching,
20. digging, ditching, drilling, augering, tunneling, scraping, cable
21. or pipe plowing and driving, and wrecking, razing, rending, moving
22. or removing any structure or mass of material.

23. (b) "Utility" shall mean any person who supplies,
24. distributes or transports any of the following materials or
25. services by means of underground utility lines or underground
26. facilities:

27. (i) Gas, mixture of gases, petroleum, petroleum
28. products or hazardous liquids.

29. (ii) Electricity.

30. (iii) Telephone or telegraphic communications.

31. (iv) Sewage

32. (v) Water.

33. (c) "Underground utility lines" shall mean underground or
34. Buried cable, underground conduit pipes and related facilities for
35. transportation and delivery of electricity, telephone
36. or telegraphic communications, water, sewage, gas, mixture of gases,
37. petroleum, petroleum products or hazardous liquids.

38. (d) "Underground facility" shall mean any item of personal
39. property which shall be buried or placed below ground or submerged
40. for use in connection with the storage, conveyance or protection
41. of water, sewage, electronic, telephonic or telegraphic
42. communications, electric energy, gas, mixture of gases, petroleum,
43. petroleum products, hazardous liquids or other substances, and
44. shall include, but not be limited to, pipes, sewers, conduits,
45. cables, valves, lines, wires, manholes, attachments and those
46. portions of poles below ground.

47. (e) "Person" shall mean any individual, firm, partnership,
48. association, corporation, utility, joint venture, municipality,
49. state governmental unit, subdivision or instrumentality of the
50. state, or any legal representative thereof.

51. SECTION 3. (1) In addition to complying with all applicable
52. regulations and requirements of state, county and municipal
53. authorities, every person who shall engage in excavation of any
54. kind on public thoroughfares or public lands, or in excavation by
55. the use of mechanical excavating equipment on private property
56. shall:

57. (a) make reasonable efforts to inform himself of the
58. presence and location of any underground utility lines and

underground facilities in or near the area where the excavation is to be conducted.

(b) Plan the excavation to avoid or minimize interference with or damage to underground utility lines and underground facilities in or near the excavation area.

(c) Provide at least forty-eight (48) hours advance Notice of the commencement, extent and duration of the excavation Work to the owners of the underground utility lines or underground Facilities in and near the excavation area, so that such owners May located and mark the location of underground utility lines and Underground facilities in the excavation area. No more than one (1) such advance notice shall be required to be given for any excavation or excavation contract.

(d) Notify immediately the owner of any underground utility lines and underground facilities that may have been damaged or dislocated during the excavation work.

Provided, however, that if such underground utility lines are not reasonably marked by the owning utility, the provisions of this act will not apply.

(2) Nothing in this act shall apply to any excavation on private property done by the owner of the property for his own purposes by use of hand tools or of excavating equipment/used by him.

SECTION 4. Every person owning or operating underground utility lines or underground facilities shall, upon receiving advance notice of the commencement of excavation, make investigation within forty-eight (48) hours after receiving notice, to determine the location of its facilities in the area of

the proposed excavation, and shall either mark, but some reasonable and customary means, the location of underground utility lines and underground facilities in or near the area of the excavation, so as to enable the person engaged in excavation work to located the facilities in advance of and during the excavation work, or shall advise in writing that marking is not necessary.

SECTION 5. The advance notice provisions of of this act shall not apply to any person making an excavation at times of emergency involving danger to life, health or property. However, every person who shall engage in emergency excavation shall take all necessary and reasonable precautions to avoid or minimize interference with or damage to existing underground utility lines and underground facilities in and near the construction area, and shall notify as promptly as possible the owners of underground utility lines and underground facilities in and near the emergency excavation area. In the event of damage to or dislocation of any underground utility lines or other underground facilities caused by the emergency excavation work, the person responsible for the excavation shall immediately notify the utility of the damage or dislocation.

Section 6. The act of giving advance notice and/or obtaining or making reasonable efforts to obtain information as required by this act shall not relieve any person making any excavation from doing so in a careful and prudent manner, nor shall it relieve such person from liability for any injury or damage proximately resulting from his negligence or his failure to comply with this act. However, the act of giving notice shall relieve the notifying party of all liability to a utility should such notice

115. be ignored or the information provided subsequent to said notice

116. be materially inaccurate.

117. Section 7. In addition to any other rights and remedies

118. accorded by law, the utility or any other party that is damaged as

119. a result of a failure of anyone to comply with this act shall (a)

120. have a civil cause of action against any person whose failure to

121. comply with this act proximately contributed to the damage to the

122. owner's property, and (b) be entitled to recover from any such

123. person compensatory damages.

124. Section 8. This act shall take effect and be in force from

125. and after its passage.